



DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 400, 407, and 457

[Docket ID FCIC-21-0008]

RIN 0563-AC76

General Administrative Regulations, Administrative Remedies for Non-Compliance; Area Risk Protection Insurance Regulations; Common Crop Insurance Policy, Basic Provisions; Common Crop Insurance Regulations, Sunflower Seed Crop Insurance Provisions; Common Crop Insurance Regulations, Coarse Grains Crop Insurance Provisions; and Common Crop Insurance Regulations, Dry Bean Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, U.S. Department of Agriculture (USDA).

ACTION: Final rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) is amending its regulations to revise organic terminology to be consistent with USDA's National Organic Program, provide cover crop relief for prevented planting situations, add flexibility to the prevented planting provisions, provide an option for rice producers to delay measurement of farm-stored production, allow enterprise units by type for sunflowers, add earlage and snaplage as an acceptable method of harvest for corn, clarify that in a loss situation when a producer changes their planned method of harvest they must notify insurance providers before harvest begins, and clarify enterprise and optional unit insurance choices for contract seed bean producers. The changes to the policy made in this rule are applicable for the 2022 and succeeding crop years for crops with a contract change date on or after November 30, 2021. For all other crops, the changes to the policy made in this rule are

applicable for the 2023 and succeeding crop years.

DATES: *Effective date:* This final rule is effective November 30, 2021.

Comment date: We will consider comments that we receive by the close of business **[Insert date 60 days after date of publication in the *FEDERAL REGISTER*]**. FCIC may consider the comments received and may conduct additional rulemaking based on the comments.

ADDRESSES: We invite you to submit comments on this rule. You may submit comments by either of the following methods, although FCIC prefers that you submit comments electronically through the Federal eRulemaking Portal:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and search for Docket ID FCIC-21-0008. Follow the instructions for submitting comments.
- Mail: Director, Product Administration and Standards Division, Risk Management Agency (RMA), US Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133-6205. In your comment, specify docket ID FCIC-21-0008.
- Comments will be available for viewing online at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Francie Tolle; telephone (816) 926-7829; or email francie.tolle@usda.gov. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

The FCIC serves America's agricultural producers through effective, market-based risk management tools to strengthen the economic stability of agricultural producers and rural communities. FCIC is committed to increasing the availability and effectiveness of Federal crop insurance as a risk management tool. Approved Insurance

Providers (AIPs) sell and service Federal crop insurance policies in every state through a public-private partnership. FCIC reinsures the AIPs who share the risks associated with catastrophic losses due to major weather events. FCIC's vision is to secure the future of agriculture by providing world class risk management tools to rural America.

Federal crop insurance policies typically consist of the Basic Provisions, the Crop Provisions, the Special Provisions, the Commodity Exchange Price Provisions, if applicable, other applicable endorsements or options, the actuarial documents for the insured agricultural commodity, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV.

FCIC amends the Subpart R (7 CFR part 400), ARPI Basic Provisions (7 CFR part 407), CCIP Basic Provisions (7 CFR 457.8), Sunflower Seed Crop Provisions (7 CFR 457.108), Coarse Grains Crop Provisions (7 CFR 457.113); and Dry Bean Crop Provisions (7 CFR 457.150). The changes to the policy made in this rule are applicable for the 2022 and succeeding crop years for crops with a contract change date on or after November 30, 2021. For all other crops, the changes to the policy made in this rule are applicable for the 2023 and succeeding crop years.

Comments Related to 85 FR 38749-38760 Published June 29, 2020

The first final rule with request for comment was published in the **Federal Register** on June 29, 2020, (85 FR 38749-38760) amending the ARPI Regulations; CCIP Basic Provisions; and the Common Crop Insurance Regulations, Coarse Grains Crop Insurance Provisions (Coarse Grains Crop Provisions). Comments were received from five commenters. Three comments were from individuals, whose comments were unrelated to the rule. One comment was from an insurance company. The last comment was from a trade association. FCIC addressed editorial comments in the final rule with request for comment published in the **Federal Register** on November 30, 2020, (85 FR 76420-76428). FCIC addressed the non-editorial public comments related to the ARPI

Basic Provisions and CCIP Basic Provisions in a final rule with request for comment published in the **Federal Register** on June 30, 2021, (86 FR 34606-34611). The comments received regarding the June 29, 2020, final rule with request for comment regarding the Coarse Grains Crop Provisions and FCIC's responses are as follows:

Following another crop (FAC) and Not following another crop (NFAC)

Comment: A commenter recommended replacing the term “defined” with “specified” in the definition of “Following another crop (FAC)” and “Not following another crop (NFAC)” Unless the Special Provisions actually contain “definitions” of the FAC and NFAC cropping practices (the same or different from these in the Crop Provisions?), it would be more accurate to change “defined” to “specified.” This phrasing is commonly used in policies and procedures.

Response: FCIC agrees and is replacing the term “defined” with “specified” in the definition of “Following another crop (FAC)” and “Not following another crop (NFAC).”

Comment: A commenter recommended adding the phrase, “in the same crop year” at the end of the definition of “Following another crop (FAC)” and “Not following another crop (NFAC)” as a clarification. While the reference to “...in the same crop year” might not be strictly necessary, it might a helpful clarification. For example, if a 2021 crop year spring crop is planted in spring of 2021, followed by a 2022 crop year fall crop planted on the same acreage in fall 2021, that fall crop is not considered “FAC” because those are two different crop years even though in the same calendar year.

Response: The FAC and NFAC Special Provisions (SP) statements refer to calendar year and adding the reference to crop year in the Crop Provisions is conflicting and may cause even more confusion. No change will be made.

Earlage

Comment: A commenter stated that FCIC has expanded the term silage to include various usages such as earlage. It would provide clarity to either include reference to

earlage, etc., usages in the definition of “Silage” or revise the definition of “Harvest” to state: “Combining, threshing, or picking the insured crop for grain, or cutting for hay, silage (including earlage, etc.), or fodder.”

Response: FCIC is revising the definition of “harvest” to include earlage and snaplage to treat earlage and snaplage consistent with grain, hay, or fodder.

Appraisals When Crop is Harvested in a Manner Other Than Reported

Comment: A commenter suggested adding the bolded language in section 11(c), Duties in the Event of Damage or Loss: “(c) If you will harvest any acreage in a manner other than as you reported it for coverage (e.g., you reported planting it to harvest as grain but will harvest the acreage for silage, **hay or fodder**; or you reported planting it to harvest as silage but will harvest the acreage for grain), you must notify us before harvest begins **so the acreage can be appraised as the type insured**. Failure to timely provide notice will result in production to count determined in accordance with section 12(c)(1)(i)(E).”

Response: FCIC agrees and will clarify in section 11(c) that notice is required before harvest begins if a producer decides to harvest in a manner other than reported on their acreage report (such as harvesting grain as silage or vice versa) so the adjuster can appraise the acreage to determine production to count used for claim purposes.

Minor Editorial and Clarification Suggestions

Comment: A commenter noted in section 2, Unit Division, if the producer elects separate “EC,” enterprise units by cropping practice for both FAC and NFAC cropping practices but then does not qualify for EC on one of the cropping practices (and that is discovered on or before the acreage reporting date), the new option allows the insured to keep EC on the one that qualifies and have Basic Unit and/or Optional Unit on the other. With three options for unit structure in this situation, it is not necessary to have “or” at the end of 2(a)(4)(i)(A).

Response: FCIC agrees and is removing the “or” from the end of the phrase in section 2(a)(4)(i)(A).

Comment: A commenter noted in section 6(e), Insured Crop, that this provision states, in part, that “... the soybean crop insured will be all of the soybeans in the county that are planted for harvest as **beans**.” [emphasis added]. Since the term “beans” is not included in the definition of “harvest” nor elsewhere in the provisions, the commenter suggested either changing “beans” to “soybeans,” or by adding a definition of “beans” in section 1 to provide useful clarity.

Response: FCIC agrees and is replacing the term “beans” with “soybeans” for clarity.

In addition to the changes described above, FCIC has made the following changes:

Subpart R

In the General Administrative Regulations Subpart R - Administrative Remedies for Non-Compliance, FCIC is revising the cap on civil fines to reference the maximum amount specified in 7 CFR 3.91(b)(7). Prior to this rule, the provisions list a fixed dollar amount of \$10,000; however, this fine should be updated in accordance with 7 CFR 3.91(b)(7) which is routinely adjusted for inflation.

ARPI Basic Provisions and CCIP Basic Provisions

For both ARPI Basic Provisions (7 CFR part 407) and CCIP Basic Provisions (7 CFR 457.8), in section 1, FCIC is:

Revising the definitions of “buffer zone,” “certified organic acreage,” “organic farming practice,” and “transitional acreage” to be consistent with the National Organic Program definitions. This will ensure terms are clear, descriptive, and consistent across USDA.

Revising the definition of “cover crop” to add a reference to the Special

Provisions. A Special Provisions statement prohibits corn from being considered a cover crop if it was planted on acreage that has been prevented from being planted. Potential abuse was reported for the 2019 crop year regarding corn being planted on the same acreage after a prevented planting payment has been made and claimed as a cover crop when the corn was not planted for conservation purposes but rather the benefit of corn cut for silage.

Adding a definition of “NAP” for Non-Insured Crop Disaster Assistance Program. The term is used more than once throughout the policy.

Revising the definition of “Second crop” to remove the reference to a cover crop covered by FSA’s Noninsured Crop Disaster Assistance Program (NAP) because cover crops are not insurable under NAP.

Adding a definition of “volunteer crop” to define the term used in the policy and Crop Provisions. Throughout the policy the terms cover crop and volunteer crop are often in the same phrase. Cover crop is defined in the policy and it is appropriate to also define volunteer crop.

ARPI Basic Provisions

A change applicable only to the ARPI Basic Provisions (7 CFR part 407) is the removal of the Preamble language which references the crop year insurance is in effect. The crop year in effect for the crops covered under the ARPI Basic Provisions varies depending on the contract change date. The changes to the policy made in this rule are applicable for the 2022 and succeeding crop years for crops with a contract change date on or after November 30, 2021. For all other crops, the changes to the policy made in this rule are applicable for the 2023 and succeeding crop years. Therefore, FCIC is removing the sentence in the Preamble.

CCIP Basic Provisions

Other changes applicable only to the CCIP Basic Provisions (7 CFR 457.8) are:

Section 14, Duties in the Event of Damage, Loss, Abandonment, Destruction, or Alternative Use of Crop or Acreage, of the CCIP Basic Provisions, revise section 14(e)(1)(ii) to allow the option to delay measurement of farm-stored production (180-day extension) if allowed by the Special Provisions. Previously, the option was only allowed for grain crops. A Special Provisions statement will be created, and the extension will apply on a crop basis for crops that can easily and safely be stored and do not naturally deteriorate easily during farm storage, and therefore, are low risk for delaying measurements for loss adjustment.

Section 15, Production Included in Determining an Indemnity and Payment Reductions, discontinue reducing prevented planting payments on acreage that has been prevented from planting that is later cash rented. Prior to this rule, policy and procedure stated that if a producer receives cash rent for acreage that had been prevented from planting a first insured crop, the producer was limited to 35 percent of the prevented planting payment on the acreage regardless of the subsequent person's use of the rented acreage. With the removal of the November 1 date, as mentioned in the section 17 changes below, a producer with acreage claimed as prevented planting could plant a cover crop and hay, graze, or cut the cover crop for silage, haylage, or baleage without a reduction in their prevented planting payment. FCIC considers the benefits of using a cover crop as animal feed similar to the benefit of cash renting the acreage. Therefore, FCIC will no longer reduce prevented planting payments when acreage that has been prevented from planting is cash rented as long as it is not harvested for grain or seed.

Section 17, Prevented Planting, of the CCIP Basic Provisions, revise the policy provisions in response to a Prevented Planting Workgroup that included RMA and industry representatives. Prevented planting is a feature of many crop insurance plans that provides a partial payment to cover certain pre-plant costs for a crop that was prevented from being planted due to an insurable cause of loss. The workgroup reviewed

the current policy related to cover crops, volunteer crops, discussed impacts to the prevented planting program, and explored policy improvements. The workgroup also reviewed the requirement that acreage must be physically available for planting to be eligible for a prevented planting payment (added November 30, 2020). The “1 in 4” requirement is a part of the requirement that the acreage must be physically available for planting. The “1 in 4” requirement states that the acreage must have been planted to a crop, insured, and harvested (or adjusted for a loss excluding flood, excess moisture, or drought or other cause of loss specified in the Special Provisions) in at least 1 out of the previous 4 crop years. The following lists the changes to section 17(f):

Incorporate RMA Manager’s Bulletin MGR-21-004 by revising section 17(f)(5) to allow a cover crop planted on acreage claimed as prevented from being planted to be hayed, grazed, or cut for silage, haylage, or baleage at any time without a reduction to the prevented planting payment, provided the producer meets all other policy provisions. Prior to this rule, throughout FCIC-approved procedures for cover crops and prevented planting, November 1 is used as a reference point for when a cover crop may be hayed, grazed, or cut for silage, haylage, or baleage. For example, a cover crop planted after the late planting period for a crop that was prevented from being planted may be hayed, grazed, or cut for silage, haylage, or baleage on or after November 1, and the producer could still receive a full prevented planting payment. If the cover crop was hayed, grazed, or cut for silage, haylage, or baleage before November 1, or harvested for grain or seed at any time, the cover crop was considered a second crop and the producer’s prevented planting payment was reduced by 65 percent.

As defined in the CCIP Basic Provisions, a cover crop is a crop generally recognized by agricultural experts as agronomically sound for the area for erosion control or other purposes related to conservation or soil improvement. FCIC rescinded the November 1 standard, as it relates to haying, grazing, or cutting for silage, haylage, or

baleage of a cover crop from procedure for the 2021 and succeeding crop years.

However, a cover crop harvested for grain or seed at any time will continue to result in a prevented planting payment reduction in accordance with section 15(f)(2) of the CCIP Basic Provisions. Similar revisions were made for language consistency regarding double cropping eligibility determination in section 15(g), Production Included in Determining an Indemnity and Payment Reductions, of the CCIP Basic Provisions.

Add language in section 17(f)(8) to incorporate RMA Manager's Bulletin MGR-21-002 which allows the annual regrowth for the crop year of an insured perennial Category B crop, such as alfalfa, red clover, or mint, to be considered planted when determining if the land is available for planting. In addition, the annual regrowth for the crop year of a perennial planted forage insured under Pasture, Rangeland, and Forage (PRF) reported with the intended use of haying is considered planted for the purpose of determining if the land is available for planting. Provided the land was planted (including the clarifications stated above), insured, and harvested (or adjusted for a loss excluding flood, excess moisture, or drought or other cause of loss specified in the Special Provisions) within the same crop year in 1 of the last 4 crop years, the land would meet the current prevented planting available for planting "1 in 4" requirement.

Add language in section 17(f)(8) to include another test to determine if the land was available for planting if it was not previously insured. If the land does not meet the current "1 in 4" requirement because crop insurance for a single crop or NAP coverage was not available, the land may qualify for prevented planting if the producer can prove the land was planted and harvested using good farming practices for the crop in at least 2 consecutive years out of the 4 previous crop years.

Add language in section 17(f)(8) that will allow changes to the eligible for planting language through the Special Provisions, for the "1 in 4" requirement.

Add language in section 17(f)(8) to allow for NAP coverage to qualify as “insured” for the “1 in 4” requirement.

Sunflower Seed Crop Provisions

Add a new section 2, Unit Division, to allow enterprise and optional units by type for sunflower seed. Allowing separate enterprise and optional units enables producers to be indemnified separately by type. The benefit for producers is that a gain on one type (e.g., confectionery type) does not offset the loss payment on another type (e.g., oil type). Enterprise units are attractive to producers because additional premium discounts are available as the risk is diversified across the county. Since FCIC is adding a new section 2, all subsequent sections and references to subsequent sections will be renumbered accordingly.

FCIC is also updating the example in redesignated section 12 to reflect current market prices for a more accurate portrayal of the prices that producers are experiencing.

Coarse Grains Crop Provisions

The Coarse Grains Crop Provisions were revised on June 29, 2020, with a final rule with request for comment. FCIC is making the following revisions in response to comments received:

Section 1, Definitions, of the Coarse Grains Crop Provisions, revise the definition of “harvest” to include earlage and snaplage as a harvested crop. FCIC received questions in the past to identify earlage and snaplage in the policy. Questions were raised in response to the 2020 Derecho on whether FCIC considers earlage as harvested. FCIC will revise the definition of “harvest” to include earlage and snaplage to treat earlage and snaplage consistent with grain, hay, or fodder. This change is in response to a comment made to the June 29, 2020, final rule.

Section 11, Duties in the Event of Damage or Loss, of the Coarse Grains Crop Provisions, revise section 11(c) to include “hay or fodder” to be consistent with the

definition of “harvest.” FCIC is clarifying that notice is required before harvest begins if a producer decides to harvest in a manner other than reported on the producer’s acreage report (such as harvesting grain for silage or vice versa) so the adjuster can appraise the acreage to determine production to count that is used for claim purposes. This change is in response to a comment made to the June 29, 2020, final rule.

Section 12(e)(2), Settlement of Claim, remove the word “may” and replace with “will.” Prior to this rule, the policy stated for silage appraisals made after the normal harvest period, the insurance companies “may” increase production to count to a 65 percent moisture equivalent. The word “may” is misleading because procedure requires this adjustment; there is no other option for increasing production to count in these situations. Changing the language to state, “will” is more transparent and consistent with existing FCIC issued procedures.

FCIC is also making non-substantive changes to the regulation. Examples include making stylistic changes, making grammatical corrections, updating prices, and clarifying word changes. These revisions are editorial in nature and are intended to provide clarity to the regulation.

Dry Bean Crop Provisions

The Dry Bean Crop Provisions were revised June 24, 2021, with a final rule with request for comment. FCIC is making the following clarifications in response to questions received after the close of the comment period about how to implement the new provisions.

Section 2, Unit Division, of the Dry Bean Crop Provisions, clarifies that a separate enterprise or optional unit for contract seed beans is allowed where contract seed beans are listed as an insurable type in the county actuarial documents. This clarifies a change issued as a Final Rule in June 2021, allowing separate enterprise units by type. Some dry bean varieties (e.g., Pinto, Navy) are listed as insurable types but could also be

produced under a contract as seed. This has caused confusion because “Contract Seed Beans” are also an insurable type in some counties. Insurance providers have questioned how to interpret the June Final Rule allowing separate enterprise units by type for these varieties.

FCIC will also be removing language in section 2 that restricts seed bean contracts based on both acreage and production from being eligible for a separate enterprise or optional unit. Many seed bean contracts include an estimated or typical yield that is in addition to actual production. These yields have often been included in seed bean contracts so the seed company can track production inventory estimates and help the grower with expected crop value when lending institutions are involved. The withdrawal of these combination style contracts from this section will avoid making them ineligible for optional or enterprise units and move the focus on whether the seed bean contracts meet the requirements stated in the Special Provisions.

FCIC is also making a grammatical change to the introductory text for subject-verb agreement.

Effective Date, Notice and Comment, and Exemptions

The Administrative Procedure Act (APA, 5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to contracts. This rule governs contracts for crop insurance policies and therefore falls within that exemption.

This rule is exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996.

For major rules, the Congressional Review Act requires a delay the effective date of 60 days after publication to allow for Congressional review. This rule is not a major rule under the Congressional Review Act, as defined by 5 U.S.C. 804(2). Therefore, this

final rule is effective on the date of publication in the Federal Register. Although not required by APA or any other law, FCIC has chosen to request comments on this rule.

Executive Orders 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, “Regulatory Planning and Review,” and therefore, OMB has not reviewed this rule and analysis of the costs and benefits is not required under either Executive Order 12866 or 13563.

Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this rule, we invite your comments on how to make the rule easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?

- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

Environmental Review

In general, the environmental impacts of rules are to be considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347) and the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508). FCIC conducts programs and activities that have been determined to have no individual or cumulative effect on the human environment. As specified in 7 CFR 1b.4, FCIC is categorically excluded from the preparation of an Environmental Analysis or Environmental Impact Statement unless the FCIC Manager (agency head) determines that an action may have a significant environmental effect. The FCIC Manager has determined this rule will not have a significant environmental effect. Therefore, FCIC will not prepare an environmental assessment or environmental impact statement for this action and this rule serves as documentation of the programmatic environmental compliance decision.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 are to be exhausted.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.”

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

RMA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that require Tribal consultation under EO 13175. The regulation changes do not have Tribal implications that preempt Tribal law and are not expected have a substantial direct effect on one or more Indian Tribes. If a Tribe requests consultation, RMA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified in this rule are not expressly mandated by Congress.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions of State, local, and Tribal governments, or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no

Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Program

The title and number of the Federal Domestic Assistance Program listed in the Catalog of Federal Domestic Assistance to which this rule applies is No. 10.450 – Crop Insurance.

Paperwork Reduction Act of 1995

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the rule does not change the information collection approved by OMB under control numbers 0563-0053.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720-2600 or 844-433-2774 (toll-free nationwide). Additionally, program information may be made available in languages other than English. To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form,

AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or email: OAC@usda.gov.

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List of Subjects

7 CFR Part 400

Acreage allotments, Administrative practice and procedure, Claims, Crop insurance, Drug traffic control, Fraud, Government employees, Income taxes, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Wages.

7 CFR Part 407

Acreage allotments, Administrative practice and procedure, Barley, Corn, Cotton, Crop insurance, Peanuts, Reporting and recordkeeping requirements, Sorghum, Soybeans, Wheat.

7 CFR Part 457

Acreage allotments, Crop insurance, Reporting and recordkeeping requirements.

Final Rule

For the reasons discussed above, FCIC amends 7 CFR parts 400, 407, and 457, effective for the 2022 and succeeding crop years for crops with a contract change date on or after November 30, 2021, and for the 2023 and succeeding crop years for all other crops, as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

1. The authority citation for part 400 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o), and 7 U.S.C. 1515(h).

2. Amend § 400.545 by revising paragraph (f)(2) to read as follows:

§ 400.454 Disqualification and civil fines.

* * * *

(f) * *

(2) The amount of such civil fine shall not exceed the maximum amount specified in 7 CFR 3.91 (b)(7).

* * * *

PART 407— AREA RISK PROTECTION INSURANCE REGULATIONS

3. The authority citation for part 407 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(o).

4. Amend § 407.9 as follows:

a. In the introductory text, remove the sentence “This insurance is available for the 2022 and succeeding years.”;

b. In section 1:

i. Revise the definitions of “buffer zone”, “certified organic acreage”, and “cover crop”;

ii. Add a definition for “NAP” in alphabetical order;

iii. Revise the definitions of “organic farming practice”, “second crop”, and “transitional acreage”; and

iv. Add a definition for “volunteer crop” in alphabetical order.

The revisions and additions read as follows:

§ 407.9 Area risk protection insurance policy.

* * * *

1. Definitions

* * * * *

Buffer zone. Acreage designated in your organic plan that separates agricultural commodities grown under organic farming practices from those grown under non-organic farming practices. A buffer zone must be sufficient in size or other features, as stated in the National Organic Program published in 7 CFR part 205, to prevent or minimize the possibility of unintended contact by prohibited substances or organisms applied to adjacent land acres with an area that is part of the certified organic farming operation.

* * * * *

Certified organic acreage. Acreage in the certified organic farming operation that has been certified by a certifying agent as conforming to organic standards in accordance with the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.) and 7 CFR part 205.

* * * * *

Cover crop. A crop generally recognized by agricultural experts as agronomically sound for the area for erosion control or other purposes related to conservation or soil improvement, unless otherwise specified in the Special Provisions. A cover crop may be considered a second crop (see the definition of “second crop”).

* * * * *

NAP. Noninsured Crop Disaster Assistance Program published in 7 CFR part 1437, administered by FSA.

* * * * *

Organic farming practice. A system of plant production practices used on organic acreage and transitional acreage to produce an organic crop that is approved by a certifying agent in accordance with 7 CFR part 205.

* * * * *

Second crop. With respect to a single crop year, the next occurrence of planting

any agricultural commodity for harvest following a first insured crop on the same acreage. The second crop may be the same or a different agricultural commodity as the first insured crop, except the term does not include a replanted crop. If following a first insured crop, a cover crop that is planted on the same acreage and harvested for grain or seed, is considered a second crop. A crop that is covered by NAP or receives other USDA benefits associated with forage crops is considered a second crop. A crop meeting the conditions in this definition is considered a second crop regardless of whether it is insured.

* * * * *

Transitional acreage. Acreage in transition to organic where organic farming practices are being followed, but the acreage does not yet qualify as certified organic acreage.

* * * * *

Volunteer crop. A crop that was planted in a previous crop year on the applicable acreage or drifted from other acreage, successfully self-seeded, and is growing this crop year on the applicable acreage without being intentionally sown or managed.

* * * * *

PART 457 - COMMON CROP INSURANCE REGULATIONS

5. The authority citation for part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

6. Amend § 457.8 in the “Common Crop Insurance Policy” as follows:

a. In section 1:

i. Revise the definitions of “buffer zone”, “certified organic acreage”, and “cover crop”;

ii. Add a definition for “NAP” in alphabetical order;

iii. Revise the definitions of “organic farming practice”, “second crop”, and

“transitional acreage”; and

iv. Add a definition for “volunteer crop” in alphabetical order.

b. In section 14, revise paragraph (e)(1)(ii) introductory text;

c. In section 15, revise paragraph (g)(3);

d. In section 17:

i. In paragraph (f)(5)(i)(C), remove the word “or” at the end;

ii. Revise paragraphs (f)(5)(ii) and (iii);

iii. Add paragraph (f)(5)(iv);

iv. In paragraph (f)(8) introductory text, remove the semicolon at the end of the paragraph and add a period in its place;

v. Revise paragraphs (f)(8)(i)(E) and (f)(8)(ii); and

vi. Add paragraph (f)(8)(iii);

The revisions and additions read as follows:

§ 457.8 The application and policy.

* * * * *

Common Crop Insurance Policy

* * * * *

1. Definitions

* * * * *

Buffer zone. Acreage designated in your organic plan that separates agricultural commodities grown under organic farming practices from those grown under non-organic farming practices. A buffer zone must be sufficient in size or other features, as stated in the National Organic Program published in 7 CFR part 205, to prevent or minimize the possibility of unintended contact by prohibited substances or organisms applied to adjacent land acres with an area that is part of the certified organic farming operation.

* * * * *

Certified organic acreage. Acreage in the certified organic farming operation that has been certified by a certifying agent as conforming to organic standards in accordance with the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.) and 7 CFR part 205.

* * * * *

Cover crop. A crop generally recognized by agricultural experts as agronomically sound for the area for erosion control or other purposes related to conservation or soil improvement, unless otherwise specified in the Special Provisions. A cover crop may be considered a second crop (see the definition of “second crop”).

* * * * *

NAP. Noninsured Crop Disaster Assistance Program published in 7 CFR part 1437, administered by FSA.

* * * * *

Organic farming practice. A system of plant production practices used on organic acreage and transitional acreage to produce an organic crop that is approved by a certifying agent in accordance with 7 CFR part 205.

* * * * *

Second crop. With respect to a single crop year, the next occurrence of planting any agricultural commodity for harvest following a first insured crop on the same acreage. The second crop may be the same or a different agricultural commodity as the first insured crop, except the term does not include a replanted crop. If following a first insured crop, a cover crop that is planted on the same acreage and harvested for grain or seed is considered a second crop. A crop that is covered by NAP or receives other USDA benefits associated with forage crops is considered a second crop. A crop meeting the conditions stated in this definition is considered a second crop regardless of whether it is insured.

* * * *

Transitional acreage. Acreage in transition to organic where organic farming practices are being followed, but the acreage does not yet qualify as certified organic acreage.

* * * *

Volunteer crop. A crop that was planted in a previous crop year on the applicable acreage or drifted from other acreage, successfully self-seeded, and is growing this crop year on the applicable acreage without being intentionally sown or managed.

* * * *

14. Duties in the Event of Damage, Loss, Abandonment, Destruction, or Alternative Use of Crop or Acreage

* * * *

(e) * *

(1) * *

(ii) Have harvested farm-stored production and elect, in writing, to delay measurement of your farm-stored production and settlement of any potential associated claim for indemnity as allowed by the Special Provisions (Extensions will be granted for this purpose up to 180 days after the end of the insurance period).

* * * *

15. Production Included in Determining an Indemnity and Payment Reductions

* * * *

(g) * *

(3) To a prevented planting payment if a cover crop that is planted after the late planting period (or after the final planting date if a late planting period is not applicable) is harvested for grain or seed by you or another person, at any time.

* * * *

17. Prevented Planting

* * * *

(f) * *

(5) * *

(ii) Any volunteer crop is harvested for grain or seed at any time;

(iii) The act of haying, grazing, or cutting for silage, haylage, or baleage a cover crop or volunteer crop contributed to the acreage being prevented from being planted;

(iv) A cover crop is planted within or prior to the late planting period or on or prior to the final planting date if no late planting period is applicable and is harvested for grain or seed at any time.

* * * *

(8) * *

(i) * *

(E) Unless otherwise allowed in the Special Provisions, in at least 1 of the 4 most recent crop years immediately preceding the current crop year, have been planted to a crop (planted includes annual regrowth of a perennial forage or mint crop):

(1) Using recognized good farming practices;

(2) Insured under the authority of the Act or NAP; and

(3) That was harvested, or if not harvested, was adjusted for claim purposes under the authority of the Act or NAP due to an insured cause of loss (other than a cause of loss related to flood, excess moisture, drought, or other cause of loss specified in the Special Provisions).

(ii) If you do not meet the requirements of section 17(f)(8)(i)(E) because a crop specific plan of insurance offered under the authority of the Act or NAP was not available for the crops planted on the acreage in the 4 most recent crop years, the acreage may be considered physically available for planting if you can prove the acreage was

planted and harvested using good farming practices in at least 2 consecutive years out of the 4 most recent crop years immediately preceding the current crop year.

(iii) Once any acreage does not satisfy the requirements in section 17(f)(8)(i)(E) or 17(f)(8)(ii), such acreage will be considered physically unavailable for planting until the acreage has been planted to a crop in accordance with 17(f)(8)(i)(E) for 2 consecutive crop years, or until such acreage meets the requirements of 17(f)(8)(ii).

* * * * *

7. Amend § 457.108 as follows:

- a. In the introductory text, remove the year “2021” and add “2022” in its place;
- b. Redesignate sections 2 through 12 as sections 3 through 13;
- c. Add a new section 2;
- d. In newly redesignated section 9, in paragraph (h), remove the phrase “sections 8(a) through (g)” and add the phrase “sections 9(a) through (g)” in its place;
- e. In newly redesignated section 10, in paragraph (a)(2), remove the phrase “section 9(a)(1)” and add the phrase “section 10(a)(1)” in its place; and
- f. In newly redesignated section 12:
 - i. In paragraph (b)(2), remove the phrase “section 11(b)(1)(i) or 11(b)(1)(ii)” and add the phrase “section 12(b)(1)(i) or 12(b)(1)(ii)” in its place;
 - ii. In paragraph (b)(4), remove the phrase “section 11(b)(3)(i) or 11(b)(3)(ii)” and add the phrase “section 12(b)(3)(i) or 12(b)(3)(ii)” in its place;
 - iii. In paragraph (b)(5), remove the phrase “section 11(b)(4) from the result of section 11(b)(2)” and add the phrase “section 12(b)(4) from the result of section 12(b)(2)” in its place;
 - iv. In paragraph (b)(6), remove the phrase “section 11(b)(5)” and add the phrase “section 12(b)(5)” in its place;
 - v. Revise the example immediately following paragraph (b)(6);

vi. In paragraph (c)(1)(iii), remove the phrase “subsection 11(d)” and add the phrase “section 12(d)” in its place; and

vii. In paragraph (d)(4), remove the phrase “sections 11(d)(2) and (3)” and add the phrase “sections 12(d)(2) and (3)” in its place.

The revisions and additions reads as follows:

§ 457.108 Sunflower seed crop insurance provisions.

* * * * *

2. Unit Division

(a) In addition to the requirements of section 34(a) of the Basic Provisions, you may elect separate enterprise units for confectionery or oil types if these types are allowed by the actuarial documents. If you elect enterprise units for these types, you may not elect enterprise or optional units by irrigation practices.

(1) You may elect one enterprise unit for the confectionery type or one enterprise unit for the oil type, or separate enterprise units for both types, unless otherwise specified in the Special Provisions. For example: you may choose one enterprise unit for the confectionery type acreage and basic or optional units for the oil type acreage.

(2) You must separately meet the requirements in section 34(a)(4) for each enterprise unit.

(3) If you elected separate enterprise units for both types and we discover you do not qualify for an enterprise unit for one or the other type and such discovery is made:

(i) On or before the acreage reporting date, you may elect to insure:

(A) One enterprise unit for the confectionery type or oil type provided you meet the requirements in section 34(a)(4), and basic or optional units for the other type, whichever you report on your acreage report and qualify for;

(B) One enterprise unit for all acreage of the crop in the county provided you meet the requirements in section 34(a)(4); or

(C) Basic or optional units for all acreage of the crop in the county, whichever you report on your acreage report and qualify for; or

(ii) At any time after the acreage reporting date, your unit structure will be one enterprise unit for all acreage of the crop in the county provided you meet the requirements in section 34(a)(4). Otherwise, we will assign the basic unit structure.

(4) If you elected an enterprise unit for one type and a different unit structure on the other type and we discover you do not qualify for an enterprise unit for the type and such discovery is made:

(i) On or before the acreage reporting date, your unit division will be based on basic or optional units, whichever you report on your acreage report and qualify for; or

(ii) At any time after the acreage reporting date, we will assign the basic unit structure.

(b) In addition to, or instead of, establishing optional units as provided in section 34(c) in the Basic Provisions, a separate optional unit may be established for each sunflower type (designated in the actuarial documents and including any type insured by written agreement).

* * * * *

12. Settlement of Claim

* * * * *

(b) * * *

For example:

You have 100 percent share in 50 acres of sunflowers in the unit with a production guarantee (per acre) of 1,250 pounds, your projected price is \$.23, your harvest price is \$.24, and your production to count is 54,000 pounds.

If you elected yield protection:

(1) 50 acres x (1,250 pound production guarantee x \$.23 projected price) =

\$14,375.00 value of the production guarantee;

(3) 54,000 pound production to count x \$.23 projected price = \$12,420.00 value of production to count;

(5) \$14,375.00 - \$12,420.00 = \$1,955.00;

(6) \$1,955.00 x 1.000 share = \$1,955.00 indemnity; or

If you elected revenue protection:

(1) 50 acres x (1,250 pound production guarantee x \$.24 harvest price) = \$15,000.00 revenue protection guarantee;

(3) 54,000 pound production to count x \$.24 harvest price = \$12,960.00 value of the production to count;

(5) \$15,000.00 - \$12,960.00 = \$2,040.00;

(6) \$2,040.00 x 1.000 share = \$2,040.00 indemnity.

* * * * *

8. Amend § 457.113 as follows:

a. In the introductory text, remove the year “2021” and add “2022” in its place;

b. In section 1:

i. In the definition of “Following another crop (FAC)”, remove “defined” and add “specified” in its place;

ii. Revise the definition of “Harvest”;

iii. In the definition of “Not following another crop (NFAC)”, remove “defined” and add “specified” in its place;

c. In section 2, in paragraph (a)(4)(i)(A), remove the word “or” at the end;

d. In section 6:

i. In paragraph (b)(1), remove the phrase “twenty percent (20%)” and add “20 percent” in its place;

ii. Revise paragraph (b)(2)(i);

- iii. In paragraph (e), remove the word “beans” and add “soybeans” in its place;
- e. In section 11, revise paragraph (c); and
- f. In section 12:
 - i. Revise the example immediately following paragraph (b)(6);
 - ii. In paragraph (c)(1)(iv)(A), remove the phrase “production to count); or” and add “production to count.); or” in its place;
 - iii. Revise paragraph (d)(1);
 - iv. In paragraph (d)(4), remove the phrase “contained in” and add “calculated in accordance with” in its place;
 - v. In paragraph (e)(1), remove “(1/10)” after “0.1”; and
 - vi. In paragraph (e)(2), remove “may” and add “will” in its place.

The revisions read as follows:

§ 457.113 Coarse grains crop insurance provisions.

* * * * *

1. Definitions

* * * * *

Harvest. Combining, threshing, or picking the insured crop for grain, or cutting for hay, silage, earlage, snaplage, or fodder.

* * * * *

6. Insured Crop

* * * * *

(b) * * *

(2) * * *

(i) High-amylose, high-oil, or high-protein (except as authorized in section 6(b)(2)), flint, flour, Indian, blue corn, a variety genetically adapted to provide forage for wildlife, or any other open pollinated corn, unless the Special Provisions or a written agreement allows insurance of such excluded crops.

* * * * *

11. Duties in the Event of Damage or Loss

* * * * *

(c) If you will harvest any acreage in a manner other than as you reported on your acreage report (e.g., you reported planting it to harvest as grain but will harvest the acreage for hay, silage, earlage, snaplage, or fodder, or you reported planting it to harvest as silage but will harvest the acreage for grain, hay, earlage, snaplage, or fodder), you must notify us before harvest begins so the acreage can be appraised as the type reported on your acreage report to determine production to count that is used for claim purposes. Failure to timely provide notice will result in production to count determined in accordance with section 12(c)(1)(i)(E).

* * * * *

12. Settlement of Claim

* * * * *

(b) * * *

(6) * * *

For example:

You have 100 percent share in 50 acres of corn in the unit with a production guarantee (per acre) of 115 bushels, your projected price is \$4.58, your harvest price is \$4.53, and your production to count is 5,000 bushels.

If you elected yield protection:

(1) 50 acres x (115 bushel production guarantee x \$4.58 projected price) =
\$26,335.00 value of the production guarantee

(3) 5,000 bushel production to count x \$4.58 projected price = \$22,900.00 value
of the production to count

(5) \$26,335.00 - \$22,900.00 = \$3,435.00

(6) $\$3,435.00 \times 1.000 \text{ share} = \$3,435.00 \text{ indemnity}$; or

If you elected revenue protection:

(1) $50 \text{ acres} \times (115 \text{ bushel production guarantee} \times \$4.58 \text{ projected price}) =$

$\$26,335.00 \text{ revenue protection guarantee}$

(3) $5,000 \text{ bushel production to count} \times \$4.53 \text{ harvest price} = \$22,650.00 \text{ value of the production to count}$

(5) $\$26,335.00 - \$22,650.00 = \$3,685.00$

(6) $\$3,685.00 \times 1.000 \text{ share} = \$3,685.00 \text{ indemnity}$.

* * * *

(d) * *

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of:

(i) 15 percent for corn (If moisture exceeds 30 percent, production will be reduced 0.2 percent for each 0.1 percentage point above 30 percent);

(ii) 14 percent for grain sorghum; and

(iii) 13 percent for soybeans.

We may obtain samples of the production to determine the moisture content.

* * * *

9. Amend § 457.150 as follows:

a. In the introductory text, remove the word “follow” and add “follows:” in its place; and

b. In section 2, revise paragraph (d).

The revision reads as follows:

§ 457.150 Dry bean crop insurance provisions.

* * * *

2. Unit Division

* * * * *

(d) Contract seed beans may qualify for a separate enterprise or optional unit only if the seed bean processor contract specifies the number of acres under contract and contract seed beans are listed as a separate type in the actuarial documents. Contract seed beans produced under a seed bean processor contract that specifies only an amount of production are not eligible for a separate enterprise or optional unit.

* * * * *

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[FR Doc. 2021-25925 Filed: 11/29/2021 8:45 am; Publication Date: 11/30/2021]